

**STATE OF MICHIGAN**  
**DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**Office of Financial and Insurance Regulation,  
Petitioner**

**v**

**James Hardesty,  
Respondent**

**Enforcement Case No. 10-7541**

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**For the Petitioner:**

**William Peattie  
Office of Financial and Insurance Regulation  
P.O. Box 30220  
Lansing, MI 48909-7720**

**For the Respondent:**

**James Hardesty  
3030 Oakbrook Way  
Taylors, SC 29687**

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**Issued and entered  
this 7<sup>th</sup> day of April 2010  
by Ken Ross  
Commissioner**

**FINAL DECISION**

**I. Background**

James Hardesty (Respondent) is a licensed nonresident insurance producer authorized to transact the business of insurance in Michigan. In September 2009, the Office of Financial and Insurance Regulation (OFIR) received a complaint from Madison National Life Insurance Company stating that Respondent had collected insurance premiums from a number of his customers but had failed to remit those premiums, as required, to Madison National. OFIR investigated the complaint and initiated a compliance action based on that portion of the Madison National complaint involving a Michigan insured.

On February 16, 2010, Chief Deputy Commissioner Stephen Hilker issued an Administrative Complaint, Notice of Opportunity to Show Compliance, and Order for Hearing in this case which was sent to Respondent at the address above. The Administrative Complaint set

forth detailed allegations that Respondent had failed to comply with sections 249(a), 1207(1), and 1239(1) of the Michigan Insurance Code, MCL 500.249(a), 1207(1), and 500.1239(1).

The Order for Hearing required Respondent to take one of the following actions within 21 days: agree to a resolution of the case, file an answer to the allegations stated in the Order with a statement that Respondent plans to attend the hearing, or request an adjournment. Respondent failed to take any of these actions.

On March 19, 2010, the Petitioner filed a Motion for Final Decision. Given Respondent's failure to take one of the required actions, Petitioner's motion is granted. The factual allegations stated in the Administrative Complaint and related investigation report, being unchallenged, are accepted as true and are stated below.

## **II. Findings of Fact and Conclusions of Law**

1. On January 7, 2009, Respondent collected a \$170.50 premium payment from Northern Michigan Review, Inc. for a newspaper carriers accident insurance program underwritten by Madison National Life Insurance Company. This program is administered by Special Markets Insurance Consultants, Inc. which is Madison National's marketing partner for the program.
2. On February 4, 2009, Respondent collected a \$170.50 insurance premium payment from Northern Michigan Review, Inc.
3. On March 4, 2009, Respondent collected a \$134.50 insurance premium payment from Northern Michigan Review, Inc.

4. Respondent failed to remit these insurance premium payments as he was required to do. Rather, he kept the funds for his own personal use. Ultimately, the premiums were remitted to Madison National by Special Markets Insurance Consultants, Inc.
5. On November 16, 2009, an OFIR investigator sent a certified letter to Respondent requesting, by December 4, 2009, an explanation of his conduct. The letter was received by Respondent, but Respondent submitted no explanation to OFIR.
6. As a licensee, Respondent knew or had reason to know that section 1207(1) of the Michigan Insurance Code requires that an insurance producer "be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an [insurance producer] in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility."
7. As a licensee, Respondent further knew or had reason to know that section 1239(1)(d) of the Insurance Code allows the Commissioner to place a producer on probation, suspend or revoke the producer's license, or levy a civil fine, or any combination thereof, for "[i]mproperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business."
8. As a licensee, Respondent further knew or had reason to know that section 1239(1)(h) of the Insurance Code allows the Commissioner to place on probation, suspend, or revoke an insurance producer's license or levy a civil fine for "[u]sing fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere."

9. As a licensee, Respondent further knew or had reason to know that section 249(a) of the Insurance Code requires that "the commissioner, as often as he deems advisable, may initiate proceedings to examine the accounts, records, documents and transactions pertaining to . . . [an insurance producer], surplus line agent, general agent, adjuster, public adjuster or counselor."
10. Based upon the conduct described above, the Commissioner concludes that Respondent has violated sections 249, 1207(1), 1239(1)(d), and 1239(1)(h) of the Insurance Code. These violations are grounds for ordering payment of a civil fine, restitution, and licensing sanctions under section 1244(1) of the Code.

### **III. Order**

Based on the conduct described above, and in accordance with the above-cited provisions of the Michigan Insurance Code, it is ORDERED that:

1. Respondent James Hardesty (OFIR System No. 0358608) shall pay restitution of \$475.50 to Special Markets Insurance Consultants, Inc.
2. Respondent James Hardesty shall pay a civil penalty of \$1,500.00.
3. The insurance producer license of Respondent James Hardesty is revoked.



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Ken Ross  
Commissioner